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10/025,310	12/18/2001	David Ross Mathog		8215

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David Ross Mathog
1215 Greenfield Avenue
Arcadia, CA 91006

EXAMINER

MARKS, CHRISTINA M

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 07/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/025,310

Applicant(s)

MATHOG, DAVID ROSS

Examiner

C. Marks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification (US Patent No. 3,933,354 on page 3, line 4: US Patent No. 4,702,475 on page 3, line 21) is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "10" and "70" have both been used to designate the red LED as well as the reference characters "20" and "60" have both been used to designate the blue LED.

The drawings are objected to because text labels should not be used to designate the parts. The numeric labels are sufficient.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claim limitations of claims 1(a) through 1(t) that are too numerous to be listed (for example (though NOT exhaustive), remote control, oscillator, receiver worn by athlete, display means, etc.) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

An examination of this application reveals that applicant is unfamiliar with patent prosecuting procedure. Applicant is reminded that the revision of the specification and claims to present the application in proper form is required. While an application can be amended to make it clearly understandable, no subject matter can be added that was not disclosed in the application as originally filed.

Applicant is advised to arrange the content of the specification as described below:

Content of Specification

- (a) Title of the Invention. (See 37 C.F.R. § 1.72(a)). The title of the invention should be placed at the top of the first page of the specification. It should be brief but technically accurate and descriptive, preferably from two to seven words.
- (b) Cross-References to Related Applications: See 37 C.F.R. § 1.78 and section 201.11 of the M.P.E.P. This relates to any other applications that Applicant has pending before the Patent Office.
- (c) Statement as to rights to inventions made under Federally sponsored research and development (if any): See section 310 of the M.P.E.P.
- (d) Background of the Invention: The specification should set forth the Background of the Invention in two parts:
 - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field".
 - (2) Description of the Related Art: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art".
- (e) Summary: A brief summary or general statement of the invention as set forth in 37 C.F.R. § 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

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- (f) Brief Description of the Drawing(s): A reference to and brief description of each of the drawing figure(s) as set forth in 37 C.F.R. § 1.74.
- (g) Description of the Preferred Embodiment(s): A description of the preferred embodiment(s) of the invention as required in 37 C.F.R. § 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. This item may also be titled "Best Mode for Carrying Out the Invention". Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (h) Claim(s) (See 37 C.F.R. § 1.75): A claim may be typed with the various elements subdivided in paragraph form. There may be plural indentations to further segregate subcombinations or related steps. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent cited.
- (I) Abstract: The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said", should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," *etc.*

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains.

If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure.

If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement.

In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof.

If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

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The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following: (1) if a machine or apparatus, its organization and operation; (2) if an article, its method of making; (3) if a chemical compound, its identity and use; (4) if a mixture, its ingredients; (5) if a process, the steps. Extensive mechanical and design details of apparatus should not be given.

As per 37 CFR 1.52(b), the application papers must be plainly written (preferably typed) on but one side of the paper. The size of all sheets of paper should be 8 to 8½ by 10½ to 13 inches (20.3 to 21.6 cm by 26.6 to 33.0 cm). Margins of at least approximately 1 inch on the left hand side and ¾ inch on the top must be reserved on each page. The lines on each page should be double spaced to permit the insertion of amendment. The pages of application, including the claims and abstract should be numbered consecutively, starting with 1, the numbers being centrally located preferably below the text.

The disclosure is objected to because of the following further informalities: the table included in the disclosure should include its own label defining it as a table (page 8) and reference characters to the drawings should not be shown in parenthesis (page 7).

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1 (b) rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The subject matter is directed to solely an abstract idea without a

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concrete or tangible result. The abstract idea is that the athlete reads the device and interprets the device without any application besides interpreting information.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

It does not appear to be disclosed in the specification that (g) a remote control can substitute for the local dials, (h) the periodic signals are generated by an oscillator, (i) the generation of random number is accomplished by measuring physical process, (j) devices other than LED are used to display information to athletes, (k) the device can display the state with alphanumeric or symbolic displays, (l) sounds are used to present the state, (m) synthesized speech is used to present the state, (n) recorded speech is used to present the state, (o) the ability to transmit to a receiver worn on the athlete, (p) the controller means are separate from the display means, (q) different portions of the device are presented on specific remote display units, (r) remote display units are activated sequentially by a localized state device in a one, two or

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three-dimensional pattern, (s) the device communicates from a coach or other player through relayed field devices to display unites, (t) using solar or line power.

Applicant is invited to point out such detailed support for the above limitations if it does exist.

Claim 1 rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited. Examination is thus precluded, as it is not comprehensible to one of ordinary skill in the art as to the meanings of the limitations encompassed by the claim.

The claim form presented by the Applicant is not that of which is required by the office. The Examiner invites the Applicant to review MPEP §608.01(i) - §608.01(o) for aid in drafting claims.

The claim must be a single sentence and all claims that refer back to that claim must be a separate dependent claim citing the claim number. Letters cannot be used to designate what the Examiner believes the Applicant intended to be dependent claims. The filing fee paid entitles the Applicant to three (3) independent claims and a total of twenty (20) claims. The Examiner

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advises the Applicant to place the steps each numbered with a letter into their own claim and properly refer these steps back to the intended claim.

Regarding claim 1(a), the claim must be put into a single sentence wherein the structure that goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. Plural indentations should be used to identify the subcombinations, elements, or related steps. Parenthesis cannot be used to further define words in the claims nor supply abbreviations and the use of the words means must find structural support in the specification. Further, the claim cannot be defined as both a device and a process as method claims must be separated from devices and apparatus. The limitations that refer to a method should be grouped with the process and the limitations that refer to the device and apparatus should be grouped with the device.

The following claims should each be separated into separate dependent claims and refer back to the independent claim as outlined in the reference patents enclosed and the sections cited above in the MPEP.

Regarding claims 1(b), "The process..." lacks proper antecedent basis, as there is no support in the claim without the proper dependency which process is being referred to as claims 1(a) does not specifically define a process as it is called both a device and a process. Further, examples cannot be included in claims.

Regarding claim 1(c), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Further, the use of and/or in a claim is not permissible.

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Regarding claim 1(d), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Further, the use of and/or in a claim is not permissible.

Regarding claim 1(e), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device.

Regarding claim 1(f), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Further, the use claim language must be definite and by stating the controller is built from electrical components under the microprocessor, the exact component to which the Applicant is referring is unknown and thus the claim is indefinite. This is defined under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Regarding claim 1(g), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Further, there is insufficient antecedent basis for "the local" dials and switches. The dials and switches were not defined in this manner prior. Further, the claim is narrative and each separate step should be its own indentation. Applicant is advised to view the form of the cited patents.

Regarding claim 1(h), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device.

Regarding claim 1(i), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. The use of and/or in

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a claim is not permissible. Further, the process must be defined in a concrete and definite manner as examples cannot be given in parenthesis and the use of etc. is not allowed.

Regarding claim 1(j), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Further, claims must be definite and concrete and cannot include the phraseology including, but not restricted to. Claims must be in the alternative only. The Examiner believes the Applicant was trying to make a list from which the elements can be selected and invites the Applicant to refer to MPEP §2173.05(h), Markush claiming.

Regarding claim 1(k), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Further, the use of parenthesis to further define limitations is not permitted.

Regarding claim 1(l), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Further, the use of parenthesis to further define limitations is not permitted.

Regarding claim 1(m), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. The use of the word especially as presented renders the claims indefinite as its meaning would not be understood in the current context by one of ordinary skill in the art.

Regarding claim 1(n), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. The use of the word especially as presented renders the claims indefinite as its meaning would not be understood in the current context by one of ordinary skill in the art.

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Regarding claim 1(o), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Multiple dependent claims can refer back to previous claims in the alternative only. See MPEP §608.01(n).

Regarding claim 1(p), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Examples cannot be used in the claims.

Regarding claim 1(q), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Parenthesis cannot be used to further define a word or limitation as well as the fact that examples cannot be used.

Regarding claim 1(r), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Examples and “quotes” cannot be used in claim language.

Regarding claim 1(s), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. Examples cannot be used in claims language.

Regarding claim 1(t), the independent claim must properly be defined as a device and include only elements of a device for dependent claims to refer to a device. The use of the word and/or is not permissible in claims language and multiple dependent claims can refer back to previous claims in the alternative only. See MPEP §608.01(n).

Because of these numerous deficiencies regarding claim format, language, dependency, and enablement, examination is precluded, as it is not comprehensible to one of ordinary skill in the art as to the limitations encompassed by the claim.

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Response by Applicant

If Applicant wishes to continue to prosecute this patent application, applicant must reply in writing. It would be of great assistance to the Office if all incoming papers pertaining to a filed application carried the following items:

1. Serial number (checked for accuracy).
2. Group art unit number (copied from filing receipt or most recent Office Action).
3. Filing date.
4. Name of the examiner who prepared the most recent Office action.
5. Title of invention.
6. Name of Applicants.

Applicant's reply should identify the Office Action the amendment is in response to by its mailing date or paper no. and must specifically request further examination and reconsideration.

Applicant or Applicant's registered representative must sign the reply.

In a reply to an Office Action, Applicant can amend the specification, drawings and claims to overcome objections and rejections as well as argue against any position taken by the Examiner. Applicant's arguments and other pertinent comments should appear under the heading "REMARKS". In Applicant's remarks, applicant must point out each error, if any, applicant believes the Examiner has made in the current Office Action and/or how any amendments Applicant has made to the specification, drawings and claims overcome the Examiner's objections and rejections. Applicant must respond to each and every ground of rejection and objection raised in the current Office Action.

To overcome the objection and rejection for lack of an enabling disclosure, Applicant can argue that the holding of non-enabling by the Examiner is in error. To be persuasive, however, such an argument must point out where, in the specification as originally filed, the specification

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provides the necessary detailed disclosure for supporting the claimed invention. Alternatively, the Applicant could rebut the Examiner's holding of non-enabling by submitting evidence that the disclosure as it now stands is sufficient to enable an artisan, of ordinary skill, to make and use the invention. Such evidence should take the form of patents or literature published before the filing date of Applicant's application. Alternatively, the evidence could take the form of one or more affidavits by skilled in the art, stating facts, and on the basis of their knowledge and skill, establish that, on or before the filing date of Applicant's application, one of ordinary skill in the art could make and use the claimed invention from reading the specification without undue experimentation.

In a response in which Applicant intends to overcome a prior art rejection, Applicant may submit amendments to the claims along with arguments and remarks or rely solely on arguments. A general statement that the claims are patentable will not be sufficient to overcome a rejection. The Patent Rules require Applicant to specifically point out the claim language that unobviously distinguishes the claimed invention over the prior art cited in the Examiner's rejection.

Applicant can amend the specification and drawings by sending the Office a signed letter directing the Office to make the specified alterations. Applicant must specify the exact words to be stricken or added and the precise point in the specification (page and line number) where the changes are to be made by the amendment. Under no circumstances may an amendment introduce new subject matter to the specification, drawings or claims. New claims may be submitted but must be numbered sequentially with the last numbered claim currently pending. As per 37 C.F.R. § 1.121(a), Applicants may amend claims by specifically identifying the exact

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word or words to be entered or stricken. There are some restrictions, see 37 C.F.R. § 1.121(c) below:

A particular claim may be amended in the manner indicated in paragraph (a) of 37 C.F.R. § 1.121 to the extent of corrections in spelling, punctuation, and typographical errors.

Additional amendments in this manner will be admitted provided the changes are limited to: (1) deletions and/or (2) the addition of no more than five words in any one claim.

Any amendment submitted with instructions to amend particular claims but failing to conform to the provisions of paragraphs (b) and © of 37 C.F.R. § 1.121 may be considered nonresponsive and treated accordingly.

Lengthy amendments to the claims should be made in accordance with 37 C.F.R.

§ 1.121(b) which states:

Except as otherwise provided herein, a particular claim may be amended only by directions to cancel or by rewriting such claim with underlining below the word or words added and brackets around the word or words deleted. The rewriting of a claim in this form will be construed as directing the cancellation of the original claim; however, the original claim number followed by the parenthetical word "amended" must be used for the rewritten claim. If a previously rewritten claim is rewritten, underlining and bracketing will be applied in reference to the previously rewritten claim with the parenthetical expression "twice amended", "three times amended", *etc.*, following the original claim number.

If Applicants submit a rewritten claim, it must be identified by the original claim number followed by the parenthetical word "amended", and words inserted should be underlined and

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words to be deleted should be in brackets [like this]. Additionally the applicant is required to submit a copy of the rewritten claim without any editing marks.

Conclusion

The prior art that is believed to be relevant to that which the Applicant is disclosing has been cited below and as a reference to the proper format for a US Patent (please see the most recent patents).

US Patent No. 5,812,239: Device with a plurality of LED's that are presented to the payer wherein and exercise or training regimen requires the player to follow the instructions of the LED and has a variety of embodiments for different sports training activities.

US Patent No. 6,278,378: Athletic performance device that is worn by the payer that includes LED to designate the performance level as well as audible sounds to indicate advice and feedback.

US Patent No. 5,325,340: Performance indication device that uses a combination of LED displays to indicate the performance level of the user in respect to their current actions.

US Patent No. 5,897,457: Display device with an LED to indicate that the athlete should start performing. Athlete responds to the LED.

US Patent No. 6,066,105: LED device to measure the response time to the LED of an athlete in regards to the reflexes.

US Patent No. 3,629,600: Light system to control the movements of vehicles on the road. Different states of the lights represent the different action required by the user.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Thursday (7:30AM - 5:30 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael O'Neill, Acting SPE, can be reached on (703)-308-3484. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9302 for regular communications and (703)-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

cmm
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July 9, 2003

Michael O'Neill

**MICHAEL O'NEILL
PRIMARY EXAMINER**